

TITLE 2. DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING

[Notice Published February 19, 2010]

NOTICE OF PROPOSED RULEMAKING

The Department of Fair Employment and Housing (DFEH or Department) proposes to adopt the regulations described below after considering all comments, objections, and recommendations regarding this rulemaking proposal.

PUBLIC HEARING

The Department will hold a public hearing starting at **10:00 a.m. on April 6, 2010**, at the 7th Floor Conference Room of the Junipero Serra State Building located at 320 West Fourth Street, **Los Angeles**, California 90013.

The Department will hold a second public hearing starting at **10:00 a.m. on May 26, 2010**, at the Monterey Room of the Hiram Johnson State Building located at 455 Golden Gate Avenue, **San Francisco**, California 94102.

Both hearing rooms are wheelchair accessible. If a sign language interpreter, non-English-language interpreter or other accommodation is needed to attend or testify at the hearing, please notify Lisa Zeltner, Senior Legal Analyst, at (916) 478- 7267 or lisa.zeltner@dfeh.ca.gov, at least two weeks before the scheduled date of the hearing.

At the hearings, any person may present statements or arguments orally or in writing relevant to the proposed action described in the Informative Digest. The Department requests but does not require that persons who make oral comments at the hearing also submit a written copy of their testimony at the hearing.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Department. The written comment period closes at **5:00 p.m. on May 26, 2010**. The Department will consider only comments received at DFEH Headquarters by that time. Submit comments to:

Phyllis W. Cheng, Director
Department of Fair Employment and Housing
2218 Kausen Drive, Suite 100
Elk Grove, CA 95758

Comments also may be submitted by facsimile to (916) 478-7329 or by e-mail to phyllis.cheng@dfeh.ca.gov and annmarie.billotti@dfeh.ca.gov.

AUTHORITY AND REFERENCE

Government Code section 12930, subdivision (e), authorizes the Department to adopt these proposed regulations. The proposed regulations implement, interpret, and make specific the procedures of the DFEH set forth in Article 1 of Chapter 6 (employment, Unruh Civil Rights Act, Ralph Civil Rights Act, and Disabled Person Act discrimination complaints) (Gov. Code, §§ 12960 through 12976) and Article 2 of Chapter 6 (housing discrimination complaints) (Gov. Code, §§ 12980 through 12989.3) of the Fair Employment and Housing Act (FEHA) (Gov. Code, § 12900 et seq.).

INFORMATIONAL DIGEST/POLICY STATEMENT OVERVIEW

This rulemaking action clarifies and makes specific the Department's practice and procedure for receiving, investigating and conciliating complaints of employment, housing and public accommodation discrimination and hate crimes set forth in Government Code sections 12960 through 12976 and 12980 through 12989.3.

The DFEH was created by the Legislature in 1980 with the statutory authority to adopt regulations to carry out its duties and functions, which include receiving, investigating and conciliating complaints made unlawful by the FEHA (Gov. Code, § 12900, et seq.), Unruh Civil Rights Act (Civ. Code, § 51), Ralph Civil Rights Act (Civ. Code, § 51.7), and Disabled Persons Act (Civ. Code, § 54 et seq.). To date, the Department has not adopted the regulations the Legislature contemplated, although it has developed procedures of general application (DFEH Directives) for processing complaints of discrimination filed by members of the public. Many of the Department's procedures of general application fall outside any express statutory exemption to the rulemaking requirements of the Administrative Practices Act (APA). In compliance with the APA, the Department proposes to adopt these procedures as duly noticed, vetted, and authorized regulations.

The regulations proposed in this rulemaking action would provide the procedural steps for participation in the DFEH administrative process and, where applicable, replace controlling DFEH Directives. The regulations set forth a Statement of Purpose and define key terms. The proposed regulations also include provisions governing the following: Filing a Complaint of Employment Discrimination with the Department; Liberal Construction of Complaints; Categories of Employment Discrimination Complaints Accepted by the Department for Filing; Complaints Taken For Filing Purposes Only (employment only); Obtaining a Right-to-Sue Notice From the Department (employment only); Filing a Complaint with the

Department Alleging a Violation of the Unruh Civil Rights Act, Ralph Civil Rights Act, or Disabled Persons Act; Filing a Complaint of Housing Discrimination with the Department; Intake; Priority Intake; Drafting Complaints Filed for Investigation; Written Statement or Correspondence as Complaint; Testing (housing only); Multiple Complainants (housing only); Director's Complaints; Class Complaints; Retaliation Complaints – Special Considerations; Disability Complaints – Special Considerations; First Amendment Policy (housing only); Standard for Accepting Complaint When Act of Harm Occurred Outside California; Effect of Prior Waiver Agreements/Release of All Claims; Complaints Taken After Expiration of Statute of Limitation Due to Department Error; Complaints Dual-filed with EEOC (employment only); Complaints Transferred to EEOC for Processing (employment only); HUD-Generated Complaints (housing only); Department-Generated Complaints (housing only); Service of Complaints; Amending Complaints; Response to Complaint; Conciliation; Complaint Investigation; Investigative Subpoenas; Investigative Requests for Production and Inspection; Priority Processing/Case Grading System; Investigations Not Completed Within Statutory Time Limit; Receipt of Confidential Information; Accusation; Notice of Case Closure; EEOC Substantial Weight Review (employment only); Substantial Equivalence (housing only); and Departmental Appeal.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Department has made the following initial determinations:

Mandate on local agencies and school districts: None.

Cost or savings to any state agency: No additional costs or savings beyond those imposed by the existing statute, Government Code section 12900 et seq., and existing procedures utilized by the Department.

Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630: None.

Other nondiscretionary cost or savings imposed on local agencies: No additional costs or savings beyond those imposed by the existing statute, Government Code section 12900 et seq., and existing procedures utilized by the Department.

Costs or savings in federal funding to the state: None.

Significant, statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states: None.

Cost impact on representative private persons or business:

The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. No additional costs or savings beyond those imposed by the existing statute, Government Code section 12900 et seq., and existing procedures utilized by the Department, are anticipated.

Adoption of these regulations will not:

- (1) create or eliminate jobs in California;
- (2) create new businesses or eliminate existing businesses in California;
- (3) affect the expansion of businesses currently doing business in California.

Effect on housing costs: None.

Small business determination:

The Department has determined that the proposed regulations affect small business. However, no additional costs or savings beyond those already imposed by the existing statute, Government Code section 12900 et seq., and existing procedures utilized by the Department, will be imposed.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), the Department must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome to affected private persons than the proposed action.

The Department invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations at the scheduled hearings or during the written comment period.

CONTACT PERSONS

Inquiries concerning the proposed administrative action may be directed to:

Phyllis W. Cheng, Director
Department of Fair Employment and Housing
2218 Kausen Drive, Suite 100
Elk Grove, CA 95758
Telephone: (916) 478-7250
Facsimile: (916) 478-7329

E-mail: phyllis.cheng@dfeh.ca.gov

The back-up contact person for these inquiries is:

Annmarie Billotti
Associate Chief Deputy Director | Special Projects Counsel
Department of Fair Employment and Housing
2218 Kausen Drive, Suite 100
Elk Grove, CA 95758
Telephone: (916) 478-7247
Facsimile: (916) 478-7329
E-mail: annmarie.billotti@dfeh.ca.gov

Please direct requests for copies of the proposed text (“express terms”) of the regulations, the Initial Statement of Reasons, the modified text of the regulations, if any, or any other information upon which the rulemaking is based to Director Cheng or Ms. Billotti at the above address.

AVAILABILITY OF STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS, AND RULEMAKING FILE

The Department will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulations, and the Initial Statement of Reasons. The contact person identified in this notice shall make available to the public upon request the express terms of the proposed action. Copies can be obtained on the Department’s Web site at www.dfeh.ca.gov. Copies also may be obtained by contacting Annmarie Billotti at the address, telephone number or e-mail address listed above.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulations are available on the Department’s Web site at www.dfeh.ca.gov.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After holding the hearings and considering all timely and relevant comments received, the Department may adopt the proposed regulations substantially as described in this notice. If the Department makes modifications that are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Department adopts the regulations as revised. Please send requests for copies of any modified regulations to the attention of Annmarie Billotti at the

address indicated above. The department will accept written comments on the modified regulations for 15 days after the date on which they are first made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting Ms. Billotti at the above address.

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